

THE HIGH COURT
JUDICIAL REVIEW

BETWEEN

PROTECT EAST MEATH LIMITED

APPLICANT

AND

MEATH COUNTY COUNCIL

RESPONDENT

AND

TRAILFORD LIMITED, SHANNON HOMES (DUNDALK) LIMITED, ROCKMILL LIMITED,
GLENVEAGH HOMES LIMITED, NEEMATS LIMITED AND J. MURPHY (DEVELOPMENTS)
LIMITED

NOTICE PARTIES

(II) (No. 3)

JUDGMENT of Humphreys J. delivered on the 3rd day of May, 2023

1. In *Protect East Meath Ltd v. Meath County Council (II) (No. 1)* [2022] IEHC 395, [2022] 7 JIC 0108 (Unreported, High Court, 1st July, 2022), I dismissed an application for a declaration that the adoption of the Meath County Development Plan involved a failure to conduct a valid Strategic Environmental Assessment.

2. In *Protect East Meath Ltd v. Meath County Council (II) (No. 2)* [2023] IEHC 69, [2023] 2 JIC 1704 (Unreported, High Court, 17th February, 2023) I granted limited *certiorari* of the plan together with an interlocutory stay on effect being given to the zoning being quashed and to any current or future planning applications or appeals thereby affected.

3. I am now dealing with the issue of the form of the order on foot of the No. 2 judgment. The Council has proposed a draft order as follows:

"1. An Order of Certiorari by way of judicial review, pursuant to paragraph 1 of the Notice of Motion dated 16 December 2021, removing for the purposes of being quashed, the decision of the Respondent to make the Meath County Development Plan 2022-2027 on 22nd September 2021 in relation to the zoning of lands for residential use in the Southern Environs of Drogheda, but limited to:

- (i) Sheet 35(a) Southern Environs of Drogheda Sheet, 35(a) Southern Environs of Drogheda-Combined, and Sheet 35(b) Heritage, but only insofar as relates to the references to A2 Zoning and lands in the Southern Environs of Drogheda (not including any lands that were Zoned A2 Phase 1 in the previous development plan), limited in extent insofar as such A2 Zoning on such lands includes residential development or other land uses where zoning for such purposes would have required an infrastructural Assessment Report;
- (ii) the last three paragraphs of section 2.8.1.1; and
- (iii) the figure '178.70' in the table to section 2.10.4, Column 1 [*recte* I], Row 1.

For the avoidance of doubt, the land-use zoning objective in respect of the A2 lands the subject-matter of paragraph 1 of this Order shall be 'Rural'.

The within Order is without prejudice to the right of the Council to lawfully adopt a Local Area Plan, Joint Area Plan or Variation of the Development Plan in a manner consistent with the Judgment of the Court in the within proceedings, dated 17th February 2023.

2. An Order vacating the Order made on 1 July 2022 dismissing the application for relief by way of judicial review sought at paragraph 2 of the Notice of Motion dated 16 December 2021.

3. An Order dismissing the application for relief by way of judicial review sought at paragraph 2 of the Notice of Motion dated 16 December 2021.

4. The Applicant's costs of the proceedings to be paid by the Respondent, which costs are to be adjudicated in default of agreement."

4. Finalising the order requires consideration of a number of issues and I will endeavour to go through the various elements that need to be considered one by one.

Refusal of declaratory relief

5. In the No. 1 judgment, declaratory relief was refused. That order, dated 1st July, 2022, was perfected on 31st August, 2022. In the No. 2 judgment it was recorded that the order would be set aside by consent and then re-made as part of the final order. So the appropriate time to do that is now, as the draft order suggests.

Wording of *certiorari*

6. The council has surprisingly resuscitated the applicant's flawed phraseology of trying to quash the "decision to make" the plan rather than the plan itself. The conceptual problem with this formula has been explained in the No. 1 judgment (para. 33) and many other times; and I am not going to repeat that here, but nor am I going to make an order in those incorrect terms.

Appropriate zoning following *certiorari*

7. It would appear to be appropriate to add to the wording suggested by the council a specific statement that the amendment is made under s. 50A(9A) of the Planning and Development Act 2000, to make clear the jurisdictional basis for the new zoning being inserted by amendment. None of the parties disagreed with that suggestion.

8. The primary issue of contention was what the new zoning should be. At least four options were canvassed by the parties:

(i) RA Rural zoning which was initially proposed by the council; but they subsequently indicated that they were amenable to WL zoning, so this wasn't really pursued;

(ii) WL White Lands zoning;

(iii) A2 (new residential) phase II (post-2027) zoning which was akin to the zoning objective in the previous plan; or

(iv) to simply quash the zoning with no amendment leaving no zoning objective, which would be in some ways the worst option and would create a lacuna beyond what was necessitated by the order, before we even factor in the power of amendment.

9. The WL White Lands zoning is as follows:

"Objective: To protect strategic lands from inappropriate forms of development which would impede the orderly expansion of a strategic urban centre

Guidance

White Lands are located in Navan, South Drogheda, East Meath, Kilmessan, Enfield and Ratoath. These are strategic lands and their designation is to allow for a long term, integrated approach to be taken to the expansion of an urban area. It is not generally envisaged that development proposals will be brought forward during the life of this Development Plan for such lands. No indication is therefore generally offered regarding the suitability or otherwise of individual uses on said lands within this Development Plan. Should the Planning Authority be satisfied that a project proposed for lands with a white land designation would assist with the implementation of the Economic Strategy and education provision, these lands can be released for employment creating development during the plan period in accordance with the Economic Strategy. White Lands should only be released where it would lead to significant employment creation, education provision or which cannot reasonably be accommodated on other employment zoned land."

10. That seems to me to be close to the former A2 Phase II zoning, albeit that it does not refer to housing specifically but rather to "employment creating development" and "education provision". The current development plan does not have an A2 Phase II zoning in the narrative written statement (although it seems to be included on some of the maps: "A2 phasing – residential land not available for development until post 2027" appears for example on some small parts of sheet number 28(a) Land Use Zoning, Navan).

11. The council on the other hand strenuously argues that for me to revive the A2 Phase II zoning would cut across the position of the elected members in considering the variation that will be proposed, and could involve a form of predetermination. Ultimately, it is really a matter for the members to assess the position in the light of developments since the date of the adoption of the development plan, which will include not just the order for *certiorari* but no doubt the various submissions of interested parties during the variation process, including the developers here.

12. Ultimately, it seems to me that in such a situation, the court should not endeavour to be over-prescriptive. In the light of the legal basis for the orders made, it seems questionable whether it must be automatically assumed that the lands which were zoned A2 would have been zoned A2 Phase II had the members been seized of the particular issues that were canvassed in litigation. That is obviously a very distinct possibility, but by no means sufficiently certain as to make it necessarily appropriate for me to impose that zoning by order. Without taking from the developers' suggestions here in any way, it seems to me that of the two real options of White Lands zoning or reintroducing A2 Phase II as a specific zoning objective in the written statement, the White Lands zoning does less violence to the existing development plan. It is therefore more appropriate as it constitutes a less radical deviation from the adopted text because it uses a zoning recognised in the written statement rather than adding an additional one (albeit one recognised on maps alone).

13. I think this is also a situation where, notwithstanding that the developers' views are important (and that, as I hope appears from the No. 2 judgment, it was to an extent the court rather than just the original parties that pushed for the developers to be notified of the proceedings prior to making any decision), not all opposing parties are created equal. On an issue such as this, the council's views have got to carry considerable weight. The members, whose plan this is, have expressly authorised the council to defend these proceedings under s. 153(2) of the Local

Government Act 2001. Hence when the council seeks a WL zoning by way of amendment, it speaks with the voice and authority of the authors of the development plan. That is a factor of quite some significance to which considerable weight normally must be given and certainly such weight is appropriate here. There is one other factor which adds weight to the council's views which is that the developers involved here are the owners of some, but by no means all, of the lands concerned. Adopting their submission would involve deciding on the zoning of some lands in which they have in fact no interest. By contrast, the council has a statutory role in relation to all of the lands concerned which adds to the weight of their submission under this heading.

14. So while it will be WL zoning, I am not at all convinced that this makes a huge difference in practice because residential development is obviously a form of economic activity, so it would appear to be well within the potential scope of the WL designation.

15. There is, however, one final problem. The council's suggestion of WL zoning is in fact inconsistent with the wording of the order as announced, which was to quash the existing zoning only in part. It does not seem possible to superimpose on what remains of the A2 zoning some further and different zoning, even by way of amendment (since the power of amendment addresses a lacuna so that the plan makes sense overall, rather than being a free-floating power). The more logical way to achieve what the council is suggesting is simply to quash the A2 zoning on these lands in full, which would properly allow the amendment to be made in the form it was proposed. I will assume that the council would favour that option on reflection but they can come back to the court within 7 days if that assumption is wrong.

Stay

16. When the order of *certiorari* was announced in the No. 2 judgment, I granted two stays. The first was a purely temporary one staying the quashed zoning until such time as the order of *certiorari* was perfected. The present order when perfected will replace that stay, rendering it unnecessary. If you have *certiorari* you don't need a stay because there isn't anything left to stay.

17. The second stay was on any planning applications and appeals effected by the impugned zoning. As there will be a time gap between the perfection of the order and the coming into effect of any variation, it is necessary and appropriate that such a stay continues, so that the developers are not prejudiced in their planning applications and appeals in the event that the variation is of benefit to them. Consequently, I will add to the council's wording a clause providing that there will be a stay on any current or future planning applications or appeals on the lands concerned until a variation to the plan made in the light of the order of the court comes into force, or pending further order of the court in the meantime, with liberty to apply, and that for the avoidance of doubt the stay will include planning appeals numbers 313190-22, 313187-22 and 314352-22.

18. It was initially suggested that the proceedings should be adjourned for this purpose but that is procedurally incorrect. I am now making the final order, not adjourning the proceedings, so it would be a question of making that order subject to liberty to apply regarding the stay.

Costs

19. An issue arose in relation to the wording of the order for costs, and it was agreed between the applicant and the council that the wording in that regard at para. 4 of the curial part of the proposed order would be amended to include reference to reserved costs.

20. The wording proposed involves an order for costs of the proceedings *simpliciter* in favour of the applicant, even though the applicant was unsuccessful in module I of the proceedings. To avoid any argument later about possible misunderstandings, I am assuming this was intentional but the council can again inform the court forthwith if that is not the case.

21. Finally, and again purely to avoid any argument later, I am also assuming that the council has come to this application fully aware of the issue that questions the entitlement of this particular applicant to costs that has been raised in separate proceedings [2023 No. 135 JR], and that it has decided not to pursue that issue here irrespective of the outcome of those other proceedings. Again the council will have to revert immediately if that assumption is incorrect.

Order

- 22.** For the foregoing reasons, subject to any contrary application, the order will be as follows:
- (i) an order of certiorari by way of judicial review, pursuant to paragraph 1 of the Notice of Motion dated 16th December, 2021, removing for the purposes of being quashed, the following parts only of the Meath County Development Plan 2022-2027 adopted by the respondent on 22nd September 2021:
 - (a) Sheet 35(a) Southern Environs of Drogheda Sheet, 35(a) Southern Environs of Drogheda-Combined, and Sheet 35(b) Heritage, but only insofar as relates to the references to A2 Zoning and lands in the Southern Environs of Drogheda (not including any lands that were Zoned A2 Phase I in the previous development plan);
 - (b) the last three paragraphs of section 2.8.1.1; and
 - (c) the figure "178.70" in the table to section 2.10.4, Column I, Row 1;
 - (ii) an order under s. 50A(9A) of the Planning and Development Act 2000 amending Sheet 35(a) Southern Environs of Drogheda Sheet, 35(a) Southern Environs of Drogheda-Combined, and Sheet 35(b) Heritage as aforesaid to provide that the land-use zoning objective in respect of the A2 lands the subject-matter of the order of *certiorari* at paragraph 1 of this Order shall be "WL (White Lands)";
 - (iii) an order that the foregoing order is without prejudice to the right of the respondent to lawfully adopt a local area plan, joint area plan or variation of the development plan in a manner consistent with the judgment of the court in these proceedings, dated 17th February, 2023;
 - (iv) an order vacating the order made on 1st July, 2022 and perfected on 31st August, 2022, dismissing the application for relief by way of judicial review sought at paragraph 2 of the Notice of Motion dated 16th December, 2021;
 - (v) an order dismissing the application for relief by way of judicial review sought at paragraph 2 of the Notice of Motion dated 16th December, 2021;
 - (vi) a stay on any current or future planning applications or appeals (including, for the avoidance of doubt, planning appeals numbers 313190-22, 313187-22 and 314352-22) that are affected by the order of *certiorari*, until a variation to the plan made in the light of the order of the court comes into force, or pending further order of the court in the meantime, with liberty to apply, in lieu of the stay granted to at para. 84(iv)(b) of the judgment of 17th February, 2023;

- (vii) a direction that the respondent is required to notify An Bord Pleanála of the foregoing stay forthwith;
- (viii) an order that the applicant's costs (including reserved costs) of the proceedings be paid by the respondent, which costs are to be adjudicated in default of agreement; and
- (ix) a direction that the foregoing order be perfected following the expiry of 7 days from the date of this judgment unless within that time any party lodges with the court a written legal submission raising any issue in relation to the foregoing terms, in which case the matter will be listed in the next convenient Monday List.